

10-1320
INCOME TAX
10-28-2010

BEFORE THE UTAH STATE TAX COMMISSION

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| PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent. | ORDER GRANTING MOTION TO DISMISS Appeal No. 10-1320 Account No. ##### Tax Type: Income Tax Tax Year: 2004 & 2005 Judge: Phan |
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Attorney at Law

For Respondent: RESPONDENT REP., Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Hearing on Motion to Dismiss on September 4, 2010. In its Motion to Dismiss, dated July 27, 2010, Respondent (the “Division”) argued that Petitioner (the “Taxpayer”) failed to timely file an appeal of the audit deficiency for the 2004 & 2005-tax years.

APPLICABLE LAW

“[A] taxpayer may file a request for agency action, petitioning the commission for redetermination of a deficiency.” Utah Code § 59-1-501(2) (2009).

“[A] person shall file the request for agency action . . . (a) within a 30-day period after the date the commission mails a notice of deficiency to the person . . . or (b) within a 90-day period after the date the commission mails a notice of deficiency to the person . . . if the notice of deficiency is addressed to a person outside the United States or the District of Columbia.” Utah Code § 59-1-501(3) (2009).

To be timely, “a petition for redetermination of a deficiency must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if: (a) in the case of mailed or hand-delivered documents: (i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or (ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day

period . . .” Utah Admin. Rule R861-1A-20(2).

“A person who has not previously filed a timely request for agency action in accordance with Subsection (3) may object to a final assessment issued by the commission by: (a) paying the tax, fee, or charge; and (b) filing a claim for a refund as provided in Section 59-1-1410.” Utah Code § 59-1-501(7) (2009).

DISCUSSION

The Division stated that the Statutory Notices of Estimated Income Tax (“Notices”) were mailed on February 4, 2010, for the tax years at issue. They had been mailed to ADDRESS CITY, Utah, which remains the current address of the Taxpayer. The Notices indicated that if the Taxpayer disagreed with the audit he had thirty days to file an appeal. The deadline for filing the appeal was March 6, 2010. The Taxpayer did not file an appeal of the audit until April 7, 2010, which was beyond the thirty-day period.

The Division’s representative explained that the 30 day deadline was a statutory requirement. In the Motion to Dismiss the Division had pointed to Utah Code Sec. 59-10-525(1)¹ and Utah Admin. Rule R861-1A-20. It was the Division’s position that failure to meet this deadline was basis for dismissal of the appeal.

It was the Taxpayer’s position that to contest the audit the Taxpayer had to prepare and submit the returns for 2004 and 2005. The audit was a nonfiling audit and the Taxpayer stated it took some time to get the information and prepare the returns.

The deadline for filing an appeal to the Commission of an audit deficiency pursuant to the formal administrative appeal process is set by the Utah Legislature by statute and is a jurisdictional requirement. The Commission does not have authority to extend the deadline. If the Taxpayer wanted to file an appeal, he was required to meet the deadline. Further, he did not need to actually file the returns to open the appeal, but could have instead filed a signed Petition for Redetermination form in which he could have explained that he would be filing returns. However, regardless of whether this appeal is dismissed, the Division may still work with the Taxpayer outside the appeal process to review the returns that have now been filed and determine the correct amount of the deficiency.

¹Utah Code § 59-10-525(1) (2004), cited by the Division in the Motion to Dismiss: “Except in any case where the taxpayer has earlier filed with the commission a petition for redetermination of the deficiency as provided in Title 59, Chapter 1 Part 5, the notice of deficiency shall constitute a final assessment of the deficiency in tax, including interest thereon and any penalties or other additions to tax: (a) upon the expiration of 30 days, or 90 days if the notice is addressed to a person outside of the states of the union and the District of Colombia, after the date of mailing of the notice of deficiency to the taxpayer. . .” The Utah Individual Income Tax Act has been revised and the appeal period is now found at Utah Code § 59-1-501(3) (2009).

Appeal No. 10-1320

If the Taxpayer and the Division fail to resolve this matter outside the appeal process, the Commission notes taxpayers now have another remedy when they object to a final assessment. Utah Code §59-1-501(7) (2009) allows taxpayers who have not previously filed timely appeals to object to a final assessment by paying the tax indicated in the audit and then filing a claim for a refund as provided in the statutes. A taxpayer's claim of refund must still meet the general deadline for all claims of refunds, which in these cases will generally be two years from the date of payment. Utah Code §59-1-1410(8)(a)(ii) (2009).

The thirty-day requirement for filing an appeal is jurisdictional and the Taxpayer's failure to meet the requirement is cause for dismissal of this appeal. However, the parties are encouraged to resolve this matter outside of the appeal process.

Jane Phan
Administrative Law Judge

ORDER

Based upon the foregoing, the Commission dismisses the Taxpayer's appeal in this matter. It is so ordered.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice and Appeal Rights: Failure to pay the balance due as a result of this order within thirty days may result in an additional late payment penalty. You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission pursuant to Utah Code Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.

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